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SUMMARY RECORD OF THE 46th MEETING

Chairman: Mr. TEIRLINCK (Belgium)

Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. MSELLE

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 146: FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 (continued) (A/49/709; A/C.5/49/7/Add.12, A/C.5/49/11 and A/C.5/49/42)

1. Ms. RODRIGUEZ ABASCAL (Cuba) said her delegation agreed that the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 must be established on a sound and stable financial basis. It therefore supported the decision to finance the Tribunal through assessed contributions. It could not, however, support the decision taken by the Security Council, on the recommendation of the Secretary-General, that the Tribunal should be financed from the regular budget.

2. The Tribunal had been established for the sole purpose of prosecuting those responsible for violations of international law committed in the territory of the former Yugoslavia; it was thus temporary in nature. Her delegation had serious reservations about the decision to grant members of the Tribunal the same conditions of service as judges of the International Court of Justice. The Court was a permanent organ established under the Charter, while the Tribunal was an ad hoc body which would be disbanded when the reasons for its establishment no longer existed.

3. According to paragraph 12 of the report of the Secretary-General (A/C.5/49/42), the Tribunal was expected to be in regular session as from March 1995. Her delegation noted with concern, however, that the judges had received their emoluments with effect from November 1993. The Secretariat should have taken appropriate steps to ensure that payments were made only for the time during which the judges were fully employed with the business of the Tribunal. Her delegation supported the views expressed in paragraph 3 to 11 of the report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) with regard to the conditions of service and allowances of members of the Tribunal (A/49/790).

4. Rational use of human resources was not incompatible with the efficient operation of an organ; rather, it was a factor which enhanced efficiency. The justification for the estimated requirements of $76,800 for the services of consultants and experts (para. 28) was unclear. The establishment of nine investigation teams (para. 45) seemed appropriate, but the three Investigation Coordinators (para. 47) appeared unnecessary since their tasks could be carried out by the heads of the investigation teams. The proposed budgetary provision for the financing of those posts should therefore be eliminated. Although the human resources requested seemed excessive, the upgrading of the post of Chief of Administration to the D-1 level (para. 85) was justified in view of the importance and complexity of those functions.

5. Because of the political sensitivity and the nature of the work of the Tribunal, all regions must be properly represented. It appeared from the report of the Advisory Committee, however, that the principle of equitable geographical

distribution had not been observed. Her delegation wished to know how the Secretariat intended to rectify the imbalance.

6. The conditions placed on certain voluntary contributions could also affect the impartiality which any organ of justice must maintain. Specific guidelines governing the requirements for the receipt of contributions and their allocation by the Tribunal must be drafted without delay.

7. Mr. MISIĆ (Bosnia and Herzegovina) said that the Tribunal would be a key factor in promoting peace and healing wounds in the territories of the former Yugoslavia which were undergoing conflict. The Tribunal was more than a mechanism for putting war criminals behind bars. It could distinguish between collective and individual guilt; promote the exoneration of victims of war crimes; be a deterrent against imminent war crimes in the former Yugoslavia and against potential war crimes everywhere; encourage the return of refugees to their homes; discourage vigilante reprisals; facilitate the peace process; salvage and enhance the credibility of international law; promote stability during the tumultuous post-cold war era; and serve justice.

8. Those were only some of the reasons why the Tribunal must be adequately financed; the victims of war crimes could offer many more. His delegation strongly encouraged the Committee to reach agreement on the funding of the Tribunal so that those possibilities could become a reality. Failure to do so would be in the interest only of war criminals, both present and future.

9. Mr. GOKHALE (India) reiterated his delegation's support for the establishment of the Tribunal and for the recommendations of ACABQ on the conditions of service and allowances of the members of the Tribunal and the revised estimates for 1994-1995. As a matter of principle, his delegation believed that the Tribunal should be financed through assessed contributions under Article 17 of the Charter. At the same time, it must be recognized that the Tribunal had been established under Chapter VII of the Charter and under Security Council resolutions 808 (1993) and 827 (1993). The procedures for the apportionment of expenses should therefore be the same as for other activities mandated under Chapter VII of the Charter.

10. His delegation did not agree with the line of reasoning that the Tribunal was merely a jurisdictional mechanism to be funded from the regular budget, and it found comparisons with the International Court of Justice inappropriate. It hoped that a special account would be established for the financing of the Tribunal and that special scales could be applied.

11. Mr. ONURSAL (Turkey) said that his delegation regretted the lack of consensus and supported the financing of the Tribunal from the regular budget.

12. Mr. ORLOV (Russian Federation) said that the question of the financing of the Tribunal must be addressed without delay. It should be financed from the regular budget because of its legal functions, in accordance with existing precedents for international courts.

13. Ms. SAMPAYO (Registrar of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in

the Territory of the Former Yugoslavia since 1991) replying to the question raised by Cuba regarding geographical distribution, agreed that some regions, including Latin America and Africa, were not properly represented on the staff of the Tribunal. In an attempt to correct the geographical imbalance, letters had been sent out to solicit candidates from underrepresented areas, but the desired response had not been achieved. The Tribunal would continue its efforts by sending recruitment missions to those areas.

AGENDA ITEM 113: HUMAN RESOURCES MANAGEMENT (continued)

(b) COMPOSITION OF THE SECRETARIAT (continued)

Report of the Joint Inspection Unit (continued) (A/49/845 and Add.1)

14. Mr. HERNÁNDEZ (Joint Inspection Unit) said that the main objective of the report of the Joint Inspection Unit on United Nations recruitment, placement and promotion policies (A/49/845 and Add.1), which was to provoke in-depth discussions, had been successfully achieved. He welcomed the fact that there had been general agreement with regard to the recommendations contained therein and that some of them were already being implemented. It should therefore be possible to make swift progress towards establishing a sound human resources management system.

15. In reply to an earlier question raised by the representative of France regarding paragraphs 65, 67, 78, 79, 85 and 110 to 115, he said that the suggestions made by the Joint Inspection Unit (JIU) were intended to improve competitive examinations, particularly the oral part thereof. The planning and focus of those examinations should be designed to predict more accurately how candidates would perform in their future functions.

16. With regard to the comments made by programme managers on the subject of recruitment through competitive examinations (para. 79), he said that increased participation on their part would improve the quality of the selection process and lead to a reduction in the number of complaints.

17. An attempt had been made in the report to respond to requests for greater transparency in recruitment. He suggested that the Secretary-General's forthcoming report should include a summary of the costs, benefits, problems and prospects related to recruitment.

18. In reply to a question raised by the representative of Germany regarding the comparative study of methods used in the United Nations system for estimating geographical distribution, he said that the forthcoming report on that subject would be available in time for the fiftieth session of the General Assembly.

19. Referring to the remarks made by the representative of Japan concerning the delay in the submission of the report, he said that JIU had had some difficulties in obtaining information from the Office of Human Resources Management. It would have been helpful if the latter could have provided swifter and more complete responses to requests for information. He regretted

that, as a result of the resulting delays and problems, it had not been possible to submit the report on time.

20. The CHAIRMAN suggested that the Committee should recommend that the General Assembly should decide to take note with satisfaction of the report of the Joint Inspection Unit entitled "Inspection of the application of United Nations recruitment, placement and promotion policies" (A/49/845), as well as the Secretary-General's comments on that report, and approve the recommendations of the Joint Inspection Unit contained therein.

21. Mr. GODA (Japan) said that the General Assembly should merely "take note", not "take note with satisfaction".

22. It was so decided.

(d) OTHER HUMAN RESOURCES QUESTIONS

Payment of repatriation grant to staff members living in their home country while stationed at duty stations located in another country (A/C.5/49/59)

23. Mr. HALLIDAY (Under-Secretary-General for Administration and Management), introducing the report of the Secretary-General (A/C.5/49/59), said that for several years the General Assembly had been aware of differing practices among the organizations of the common system concerning the payment of expatriate benefits. The issue of payments to staff members living in their home country while working at duty stations in a neighbouring country mainly concerned staff members living in France but working in Geneva. United Nations practice excluded payment of expatriate benefits to such nationals residing in France, and the validity of that practice had been recognized by the Administrative Tribunal in its Judgment No. 408.

24. By contrast, a number of specialized agencies in Geneva paid expatriate benefits to their own staff who were French nationals residing in France. In its resolution 48/224, the General Assembly had requested the International Civil Service Commission (ICSC) to study the differing practices with a view to harmonizing them and to report to the General Assembly at its fifty-first session.

25. In July 1994, however, the Administrative Tribunal had issued its Judgment No. 656 which found that the language of annex IV to the Staff Regulations did not support the practice followed by the United Nations and ordered the Secretary-General to pay repatriation grant to the two applicants concerned.

26. The Secretary-General wished to bring the matter to the attention of the General Assembly so that it could, if it wished, take any appropriate legislative action in the light of that new interpretation of the Staff Regulations. The first option was to accept the Tribunal's interpretation of annex IV, which was likely to be extended to the interpretation of sections 3.2 (education grants) and 5.3 (home leave). The other option was to reject that interpretation and to maintain the current practice.

AGENDA ITEM 132: ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF THE UNITED NATIONS PEACE-KEEPING OPERATIONS (continued)

(a) FINANCING OF THE UNITED NATIONS PEACE-KEEPING OPERATIONS (continued) (A/C.5/49/L.36 and L.37)

Draft resolution A/C.5/49/L.36

27. Mr. MADDENS (Belgium), introducing draft resolution A/C.5/49/L.36 on behalf of the Chairman, said that General Assembly resolution 49/233 had not dealt with all the questions raised by the Secretary-General in his report (A/48/945). The draft resolution before the Committee therefore contained six additional sections, numbered XV to XX, which followed the sequence of the sections contained in resolution 49/233.

28. The survey mission handbook referred to in section XV would be made available to interested delegations. With regard to section XVI, it would be appropriate for the Chairman to communicate the content thereof to the Chairman of the Committee on Information.

29. He hoped that, given the broad consensus reached during informal consultations, the draft resolution would be adopted without a vote.

30. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft resolution A/C.5/49/L.36 without a vote.

31. Draft resolution A/C.5/49/L.36 was adopted.

Draft decision A/C.5/49/L.37

32. Mr. MADDENS (Belgium), introducing draft decision A/C.5/49/L.37 on behalf of the Chairman, said that the draft decision specified the point in the financial period and the budgetary cycle at which budgets and performance reports should be submitted in future to the General Assembly, and requested the Secretary-General to submit to the General Assembly on a semi-annual basis a report containing consolidated information on the application of section IV of resolution 49/233.

33. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt draft decision A/C.5/49/L.37 without a vote.

34. Draft decision A/C.5/49/L.37 was adopted.

ORGANIZATION OF WORK

35. Mr. SHARP (Australia), supported by Mr. GOKHALE (India), Ms. PERREAULT (United States of America) and Mr. KELLY (Ireland), questioned whether it was really necessary for the Committee to hold a formal meeting on Saturday, 25 March, as proposed in its programme of work.

36. The CHAIRMAN said that the programme of work was a tentative one and subject to review. While he remained open to the suggestions of members, it

should not be forgotten that a number of technical considerations, including the availability of essential documents, determined the scheduling of meetings.

37. Mr. STITT (United Kingdom), supported by Mr. SHARP (Australia), said that the Committee, as a Main Committee of the General Assembly, should take a serious view of the recurrent problem of late documentation. It would be useful if the Secretariat could provide members with a tentative programme of work up to the end of the resumed session.

38. Mr. ACAKPO-SATCHIVI (Secretary of the Committee) said that there would be no point in scheduling a meeting if the relevant report of ACABQ was not yet available.

39. Mr. STITT (United Kingdom) said that the Chairman should convey the Committee's concerns to the Chairman of the Advisory Committee and seek from him a firm commitment with regard to the submission of pending reports so that the Committee could discharge its responsibilities in an effective manner. It would also be useful if the Secretariat would prepare a list of all reports currently due from the Advisory Committee. He was close to the point of suggesting that the Committee should take a decision to censure the Advisory Committee formally for failing to provide the service to which the Committee was entitled.

40. Mr. SHARP (Australia) said that, should a proposal to censure the Advisory Committee come before the Committee, his delegation would support it.

41. Mr. MADDENS (Belgium) said that, as a subsidiary organ of the Fifth Committee, the Advisory Committee should be constrained by the same deadlines as the Fifth Committee.

42. Ms. CUERGO (Cuba) said that the Chairman should request the Chairman of the Advisory Committee to appear before the Committee to reply to the questions raised by members.

43. Mr. MUÑOZ (Spain) said that the Secretariat and the Advisory Committee should begin the preparation of documentation well in advance of the second half of the resumed session.

44. Mr. ACAKPO-SATCHIVI (Secretary of the Committee) said that the Secretariat would provide interested delegations with a list of all reports pending from the Advisory Committee. It might be useful, however, for the Committee to bear in mind that it was not the only "client" of the Advisory Committee.

45. The CHAIRMAN said that the Chairman of the Advisory Committee had informed him only that morning that he was not in a position to enter into any firm commitments with regard to the completion of pending reports. He would nevertheless convey to him the concerns of the Fifth Committee.

46. Ms. ROTHEISER (Austria), supported by Ms. EMERSON (Portugal), said that ACABQ should act as an expert body, whose role was to provide technical advice. Political discussions should take place not in ACABQ, but in the Fifth Committee itself.

47. Mr. STITT (United Kingdom) recalled that the role and activities of bodies such as the Advisory Committee would be discussed under another agenda item.

48. Ms. PEÑA (Mexico) suggested that ACABQ should be asked to give priority to matters pertaining to the Fifth Committee, to enable the latter to carry out its work efficiently. She also requested that the Chairman and members of the Advisory Committee should be fully informed of the various comments which had been made.

49. Mr. HANSON (Canada) suggested that the Fifth Committee could discuss the political implications of certain issues while awaiting the technical advice of the Advisory Committee thereon.

50. The CHAIRMAN said that that suggestion would be taken into consideration when informal consultations were held on the subject of the work of the Fifth Committee. He would fully inform the Chairman of the Advisory Committee on the discussion which had taken place regarding its work.

The meeting rose at 12 noon.